

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NORTHWEST SHEET METAL WORKERS
WELFARE FUND; NORTHWEST SHEET
METAL WORKERS PENSION FUND; and
NORTHWEST SHEET METAL WORKERS
SUPPLEMENTAL PENSION TRUST,

Plaintiffs,

v.

H & K SHEET METAL FABRICATORS, INC.,

Defendant.

No.

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

JURISDICTION AND VENUE

1. This is an action brought pursuant to Section 301 of the National Labor Relations Act, as amended (hereafter "the Act"), 29 U.S.C. § 185, and Section 502 of the Employee Retirement Income Security Act of 1974 (hereafter "ERISA"), 29 U.S.C. § 1132. Jurisdiction and venue are conferred upon this Court by 29 U.S.C. § 185(a), 1132(a), (e) and (f).

PARTIES

2. Plaintiff NORTHWEST SHEET METAL WORKERS WELFARE FUND (hereafter "Welfare Trust") is a labor-management health and welfare trust fund created pursuant to the provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c), and authorized to

1 sue in its own name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). Plaintiff Welfare
2 Fund is administered in the State of Washington.

3 3. Plaintiff NORTHWEST SHEET METAL WORKERS PENSION FUND
4 (hereafter “Pension Trust”) is a labor-management pension trust fund created pursuant to the
5 provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c), and authorized to sue in its own
6 name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). Plaintiff Pension Fund is
7 administered in the State of Washington.

8 4. Plaintiff NORTHWEST SHEET METAL WORKERS SUPPLEMENTAL
9 PENSION TRUST (hereafter “Supplemental Pension Trust”) is a labor-management pension
10 trust fund created pursuant to the provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c),
11 and authorized to sue in its own name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1).
12 Plaintiff Pension Fund is administered in the State of Washington.

13 5. Defendant H & K SHEET METAL FABRICATORS (“H & K”) is a sheet
14 metal contractor and is a party to a collective bargaining agreement with Sheet Metal Workers
15 Local 23. That industry affects commerce within the meaning of the Act. H & K has
16 employed or does employ persons represented by Local 23. H & K's principal place of
17 business is 6517 Arctic Spur Road, Anchorage, AK 99518.

18 **CLAIM FOR RELIEF**

19 6. Plaintiffs incorporate by reference as though set forth fully herein paragraphs 1
20 through 5 above.

21 7. The collective bargaining agreement between Defendant and Local 23 was in effect
22 at all times material hereto. By that agreement Defendant H & K became obligated to make
23 monthly contributions to plaintiffs Welfare, Pension, and Supplemental Pension, as well as other
24 funds, on behalf of employees represented by Local 23.

25 8. Defendant has also agreed to and has received money from its Local 23 employees,
26 as part of the employees' after-tax wages, which Defendant is and was obligated on a monthly

1 basis to deposit into each employee's account, or submit to Local 23 as part of each employee's
2 dues obligation. Defendant holds such money in trust.

3 9. Payments due to the various plaintiff and non-plaintiff Trusts, and the amounts of
4 employees' after-tax wages held in trust by Defendant, are calculated pursuant to a contribution
5 reporting form required to be prepared monthly by Defendant.

6 10. The completed contribution reporting form and accompanying payment are due at
7 the Welfare office and address within fifteen (15) days after the end of each calendar month.

8 11. In July 2017, Defendant failed to timely make all contributions to Plaintiffs,
9 despite its obligation under the collective bargaining and trust agreements to do so and despite
10 demand by plaintiffs. As such, Defendant owes outstanding late fees, in violation of its
11 obligations under the trust agreements and the collective bargaining agreement.

12 12. Unless ordered by this Court, Defendant will continue to refuse to pay to the
13 Plaintiffs the late fees due them. As a result, Plaintiffs will be irreparably damaged.

14 13. In addition to the unpaid late fees, Plaintiffs are entitled to the following pursuant
15 to Section 502(g) of ERISA, 29 U.S.C. § 1132(g), and Section 301 of the Act, 29 U.S.C. § 185,
16 as amended:

17 (a) Interest on the unpaid late fees;

18 (b) Reasonable attorneys' fees and the costs of this action.

19 A copy of this complaint will be served upon the Secretary of Labor and the Secretary of
20 the Treasury by certified mail as required by ERISA, 29 U.S.C. § 1132(h).

21 WHEREFORE, plaintiffs demand judgment against the Defendant:

22 1. Obliging Defendant to pay to plaintiffs the full amount of late fees owing, with
23 the proper amount of interest as established by Section 502(g) of ERISA, 29 U.S.C. § 1132(g), the
24 Trust Agreements, and the collective bargaining agreement;

25 2. Restraining and enjoining Defendant, its officers, agents, servants, attorneys, and
26 all persons acting on its behalf or in conjunction with it from: (a) refusing to pay late fees to

1 plaintiffs, and refusing to timely make payments for all periods thereafter for which Defendant is
2 obligated to file such reports under the terms of the collective bargaining agreement, and (b)
3 refusing to pay to plaintiffs all monies, including interest, due from July 2017 to current, and for
4 all periods thereafter for which Defendant is obligated to make timely payments under the terms
5 of the collective bargaining agreement;

6 3. Requiring Defendant to pay to plaintiffs reasonable attorneys' fees and the costs
7 of this action as set forth in Section 502(g) of ERISA 29 U.S.C. § 1132(g); and

8 4. Granting plaintiffs such further and other relief as may be just and proper.

9 DATED this 26th day of June, 2018.

10 MCKANNA BISHOP JOFFE, LLP

11 s/ Daniel Hutzenbiler

12 Daniel R. Hutzenbiler

13 WSBA No. 36938

14 Telephone: 503-821-0955

Email: dhutzenbiler@mbjlaw.com

Of Attorneys for Plaintiffs